

INTERLOCAL COOPERATION AGREEMENT
FOR USE OF REVENUE RETURNED UNDER CSEC RULE 251.3
BY CITY OF AUSTIN

This Agreement is made by the following parties:

Travis County, a political subdivision of Texas ("County") and

City of Austin, a home rule city primarily located in Travis County, Texas ("City").

RECITALS

Travis County is a member of Capital Area Council Of Governments ("CAPCOG"). Pursuant to Title 1, Texas Administrative Code, Section 251.3, the Commissioner on State Emergency Communications Rule for the Largest County ("CSEC Rule"), CAPCOG must return certain funds to County. County must use these funds for the sole purpose of reimbursing and funding eligible 9-1-1 system operation and network expenditures in compliance with that rule.

The purpose of this agreement is to provide the CITY funds for reimbursement of certain 9-1-1 system related expenditures.

Both County and City are authorized pursuant to TEX. GOV'T CODE ANN., ch. 791, to enter into an Interlocal Cooperation Agreement for the purpose described in this agreement.

AGREEMENT

NOW, THEREFORE, County and City agree to the following terms and conditions:

1 Term.

1.1 Contingent Term. This agreement is contingent upon both the continuation of and the existence of Rule 251.3, the CSEC Rule for the Largest County. If this Rule is changed or amended so that funding is not provided to County for any reason, this agreement is automatically terminated.

1.2 Initial Term. This agreement commences on the date on which it is signed by the last party to sign it. This agreement continues in force until the earlier of September 30, 2009 or the occurrence of one of the contingencies that automatically terminate this agreement.

1.3 Automatic Renewal. If the contingency in 1.1 has not occurred, this agreement automatically renews on October 1st of each year for a term of one (1) year unless either this agreement is terminated sooner pursuant to 10.0.

2 City Responsibilities.

2.1 City shall use the funds provided under this agreement only in compliance with the expenditures described in Attachment A for that Contract Year.

2.2 Notice of Expenditures. Within thirty (30) days after notice of County's receipt of funds returned under the CSEC Rule, City shall provide County with a description of its allowable 9-1-1 expenditures within the last twelve months and planned expenditures within the next twelve months.

2.3 Purchase of Equipment. City shall request reimbursement only for purchase of communications Equipment directly related to 9-1-1 emergency response.

2.4 Current Revenue Payments. City shall pay for all costs incurred pursuant to this agreement from current revenue funds.

2.5 Compliance with Laws. City shall comply with all applicable laws, rules and regulations in the performance of this agreement.

3 County Responsibilities.

3.1 Notice of Limitations. If funds are available for reimbursement of City purchases, County may notify City of return of any revenue under the CSEC Rule.

3.2 Determination of Funding. County shall consider the types of expenditures that would most benefit the 9-1-1 system and determine the types of expenditures for which it will offer reimbursement each year. County shall also consider the notices received from all governmental entities for reimbursement of expenditures that comply with the CSEC Rule. County shall notify City of the type of expenditures that qualify for that year and the amount of funding that is available for City. The notice shall include a copy of Attachment A for the Contract Year covered by the notice, the allowable types of reimbursement, and the total amount of reimbursement available.

3.3 Current Revenue Payments. County shall pay for all costs incurred pursuant to this agreement from current revenue funds.

3.4 Compliance with Laws. County shall comply with all applicable laws, rules and regulations in the performance of this agreement.

4 Liability. County is not liable for any claims, damages and attorney fees arising from the negligent, intentional or illegal acts of City employees arising from responsibilities and actions under this agreement. City is not liable for any claims, damages and attorneys fees arising from the negligent or illegal acts of County employees arising from responsibilities and actions under this agreement.

If both the City and County are found by a court of competent jurisdiction to be liable for any claims, damages and attorneys fees arising from the negligent, intentional, or illegal acts of both City and County employees under this agreement, City and County will be liable for the portion of the claims, damages and attorneys fees that arise from the negligent, intentional or illegal acts of that party as determined by the court of competent jurisdiction adjudicating the matter or as agreed in any settlement.

5 Retention, Accessibility and Audit of Records.

5.1 City Retention. City shall maintain all records and documentation for all Equipment to be reimbursed under this agreement in a readily available state and location for three (3) years after the agreement term in which City last received funds.

5.2 County Access. City shall give County, or its duly authorized representatives, access to and the right to examine all records, and other papers related to Equipment reimbursed under this agreement, at reasonable times and for reasonable periods. These rights to access continue as long as these records are retained by City.

5.3 County Audit. County has the right to conduct a financial audit of the City's performance of this agreement. City agrees to permit County, or its authorized representatives, to audit City's records that relate to this agreement and to obtain any document, materials or information necessary to facilitate this audit.

6. Limit on Agents. No agent, official, employee, or representative of County has the authority to amend or assign this agreement or waive violations of it unless expressly granted this specific authority by the Commissioners Court. No agent, official, employee or representative of City has the authority to amend or assign this agreement or waive violations of it unless expressly granted this specific authority by the City Council.

7 County Right to Contract: Other Entities. County may contract with other entities to provide for the use of revenue returned pursuant to the CSEC Rule.

8 Breach. The failure of either party to comply with the terms and conditions of this agreement is a breach of this agreement.

9 Mediation. When mediation is acceptable to both parties in resolving a dispute arising under this agreement, the parties agree to use the Dispute Resolution Center of Austin, Texas as the provider of mediators for mediation as described in the TEX. CIV. PRAC. AND REM. CODE ANN., §154.023. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in TEX. CIV. PRAC. AND REM. CODE ANN., §154.073, unless both parties agree, in writing, to waive the confidentiality.

10 Termination.

10.1 County Termination. County may terminate this agreement for one or more of the following reasons at any time in compliance with 10.2

10.1.1. City has failed to use the funds provided in compliance with this agreement and the CSEC Rule,

10.1.2. City has failed to comply with any term or condition of this agreement, or

10.1.3 County has failed to receive any funds pursuant to the CSEC Rule.

10.2 Procedure. At least twenty (20) days before the effective date of termination, County must notify City in compliance with 15.01 of the decision to terminate this agreement, the existence and nature of the breach, and the effective date of termination. City may avoid termination of this agreement pursuant to 10.1 if City cures the breach to the satisfaction of County within twenty (20) days of receipt of this notice. This time to cure may be extended, at the sole discretion of County, as long as the City diligently continues to work toward completion of the cure. If the breach is not cured to the satisfaction of County prior to the effective date of termination or any extension of the date allowed by County in writing, the City is in default and the participation of the City is automatically terminated on that date.

10.3 City Termination. City may terminate this agreement at any time in compliance with 10.4 if County has failed to comply with any term or condition of this agreement.

10.4 Procedure. At least twenty (20) days before the date of termination, City must notify County in compliance with 15.1 of the decision to terminate this agreement, the reasons for termination, and the effective date of termination. County may avoid termination of this agreement if County corrects the causes of the reasons for termination stated in the notice to the satisfaction of the City prior to the effective date of termination.

10.5 Mutual Termination. Either party has the right to terminate this agreement when both parties agree, in writing, that the continuation of the activities under this agreement would not produce beneficial results commensurate with the further expenditure of funds and what conditions of termination will apply, including the effective date of termination.

11 Non-Waiver and Reservation of Remedies.

11.1 Non-Waiver. Any act of forbearance by either party to enforce any provision of this agreement must not be construed as a modification of this agreement or as a waiver of any breach or default of the other party which then exists or may subsequently exist. The failure of either party to exercise any right or privilege granted in this agreement must not be construed as a waiver of that right or privilege. In this agreement, County and City do not waive any immunity or defense that would otherwise be available to them against claims arising in the exercise of their governmental powers and functions.

11.2 Reservation of Rights and Remedies. All rights of both parties under this agreement are specifically reserved. Any payment, act or omission by a party must not impair or prejudice any remedy or right of that party under this agreement. Any right or remedy stated in this agreement must not preclude the exercise of any other right or remedy under this agreement, the law or at equity, nor must any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

12 Entire Agreement.

12.1 Attachment. Attachment A-Equipment and Reimbursement Schedule is made a part of this contract and constitutes promised performances by City under this agreement.

12.2 Agreement All Inclusive. All oral and written agreements between the parties to this agreement relating to the subject matter of this agreement that were made prior to the execution of this agreement have been reduced to writing and are contained in this document.

13 Assignability. Neither party may assign any of the rights or duties created by this agreement without the prior written approval of the other party. It is acknowledged by City that no officer, agency, employee or representative of County has any authority to grant such assignment unless expressly granted that authority by the Commissioners Court.

14 Amendments.

14.1 Amendment of Agreement. Any change to the provisions of this Agreement except for changes to Attachment A must be made in writing and signed by both parties: County and City. It is acknowledged by City that no officer, agency, employee or representative of County has any authority to change the provisions of this agreement unless expressly granted that authority by Commissioners Court.

14.2 Amendment of Attachment A. County may amend the equipment and reimbursement stated in Attachment A annually by sending a notice of amendment change in compliance with 15.01 to City at least sixty (60) days before the beginning of the next Contract Year. If City does not send a notice in compliance with 15.01 stating that the change is unacceptable before its effective date, City shall accept the changes stated in the notice of amendment change. If City sends a notice that the change is unacceptable, no

funding is available to City during that Contract Year.

14.3 City Request. City must submit all requests for changes to this agreement to Emergency Services Coordinator. The Emergency Services Coordinator must present the City's requests to Commissioners Court for consideration.

14.4 County Request. County must submit all requests for changes to this agreement to the City Manager. The City Manager must present County's requests to the City Council for consideration.

15 Notices.

15.1 Method of Notice. Any notice required or permitted to be given under this agreement by one party to the other must be in writing and must be given and is deemed to have been given immediately if delivered in person to the address set forth in 15.2 or 15.3 for the party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address specified in 15.2 or 15.3.

15.2 Address of County. The address of County for all purposes under this contract must be:

Honorable Samuel T. Biscoe (or his successor in office)
Travis County Judge
P. O. Box 1748
Austin, Texas 78767-1748

With copies to (registered or certified mail is not required):

Honorable David Escamilla (or his successor in office)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767-1748
File No. 260.254.15

and

Danny Hobby (or his successor)
Travis County Emergency Services Coordinator
P. O. Box 1748
Austin, Texas 78767-1748

15.3 Address of City. The address of the City for all purposes under this agreement and for all notices hereunder must be:

Marc A. Ott (or successor)
City Manager
P.O. Box 1088
Austin, Texas 78767

With copies to (registered and certified mail is not required):

David Allen Smith (or successor)
City Attorney
P.O. Box 1088
Austin, Texas 78767

and

Art Acevedo (or successor)
Chief of Police
P.O. Box 1088
Austin, Texas 78767

15.4 Change of Address. Each party may change the address for notice to it by giving notice of the change in accordance with the provisions of 15.1.

16 Interpretation of Contract.

16.1 Third Party Rights Not Created This agreement is not intended and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it and neither County nor City is waiving any defense or immunity to which it is entitled against any person or legal entity that is not a party to it.

16.2 Law. This agreement is governed by the laws of Texas and is performable in Travis County, Texas.

16.3 Severability. If any portion of this agreement is ruled invalid by a court of competent jurisdiction, the remainder of the agreement must be construed as if that portion were not included in the agreement and the remainder must remain valid and binding.

16.4 Definitions. In this Agreement,

16.4.1 City Council. "City Council" means the City Council of the City of Austin.

16.4.2 Commissioners Court. "Commissioners Court" means the Travis County Commissioners Court.

16.4.3 Contract Year. "Contract Year" means the year ending with the

Travis County fiscal year which ends September 30 of each calendar year.

16.4.4 Day. "Day" means calendar day.

16.4.5 Equipment. "Equipment" means the radios, pagers, console equipment, computer hardware and software, and other communications equipment described in Attachment A and operated by City.

16.5 Computation of Time. When any period of time is stated in this agreement, the time must be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday, or a day that either County has declared a holiday for its employees, these days must be omitted from the computation.

16.6 Number and Gender. Words of any gender in this agreement must be construed to include any other gender and words in either number must be construed to include the other unless the context in the agreement clearly requires otherwise.

16.7 Headings. The headings at the beginning of the various provisions of this agreement have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this agreement.

17 Legal Authority.

17.1 City Signors. The person or persons signing this agreement on behalf of City, or representing themselves as signing this agreement on behalf of City, do hereby warrant and guarantee that he, she or they have been duly authorized by City to sign this agreement on behalf of City and to bind City validly and legally to all terms, performances, and provisions in this agreement.

16.2 County Signors. The person or persons signing this agreement on behalf of County, or representing themselves as signing this agreement on behalf of County, do hereby warrant and guarantee that he, she or they have been duly authorized by County to sign this agreement on behalf of County and to bind County validly and legally to all terms, performances, and provisions in this agreement.

17 Duplicate Originals.

17.1 This document is executed in duplicate originals.

TRAVIS COUNTY

By: _____
Samuel T. Biscoe, County Judge
Travis County, Texas

Date: _____

CITY OF AUSTIN

By: _____

Marc A. Ott
City Manager

Date: _____

APPROVED AS TO FORM:

Attorney for City of Austin

**City of Austin / Travis County
Interlocal Cooperation Agreement**

Attachment A – Equipment and Reimbursement Schedule

The Equipment City is authorized to purchase under this Agreement during contract year ending September 30, 2009, includes the following (see attached quote):

- 1. TriTech ProQA Integration Module (per seat) for Austin Police Department**
- 2. TriTech ProQA, One Year VisiCad Software Maintenance and Support**
- 3. TriTech ProQA, TriTech Project Management**

The total reimbursement available for this Equipment during contract year ending September 30, 2009 is **\$15,600**.